

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BENSLEY CONSTRUCTION, INC., on its own
behalf and on behalf of all others similarly situated,

Plaintiff,

v.

MARSH & MCLENNAN COMPANIES, INC.,
MARSH, INC., ACE USA, ACE INA, AMERICAN
INTERNATIONAL GROUP, AMERICAN RE-
INSURANCE COMPANY, ARTHUR J.
GALLAGHER & CO., HILB ROGAL & HOBBS,
COMPANY, WILLIS GROUP HOLDINGS, LTD.,
WILLIS NORTH AMERICA INC., WILLIS GROUP
LTD., UNIVERSAL LIFE RESOURCES,
UNIVERSAL LIFE RESOURCES, INC. (d/b/a ULR
INSURANCE SERVICES, INC.), THE CHUBB
CORPORATION, USI HOLDINGS, INC., METLIFE,
INC., PRUDENTIAL FINANCIAL, INC.,
UNUMPROVIDENT CORPORATION, THE ST.
PAUL TRAVELERS COMPANIES, INC., ZURICH
AMERICAN INSURANCE COMPANY, LIBERTY
MUTUAL GROUP INC., LIBERTY MUTUAL
INSURANCE COMPANY, LIBERTY MUTUAL
FIRE INSURANCE COMPANY, EMPLOYERS
INSURANCE COMPANY OF WAUSAU, and ST.
JAMES INSURANCE COMPANY LTD.,

Defendants.

Civil Action No. 05 11249 GAO

**MOTION FOR ENLARGEMENT OF TIME
TO FILE RESPONSE TO THE AMENDED CLASS ACTION COMPLAINT**

Defendants Marsh & McLennan Companies, Inc., Marsh, Inc. (herein after
“Marsh”), ACE USA, ACE INA, American International Group, Inc., American Re-
Insurance Company, Arthur J. Gallagher & Co., Hilb Rogal & Hobbs Company, Willis

Group Holdings, Ltd., Willis North America Inc., Willis Group Ltd., Universal Life Resources, Universal Life Resources, Inc. (d/b/a ULR Insurance Services, Inc.), USI Holdings Corp., MetLife, Inc., Prudential Financial, Inc., UnumProvident Corporation, The St. Paul Travelers Companies, Inc., and Zurich American Insurance Company (collectively, “Movants”) hereby move this Court, pursuant to Fed. R. Civ. Pro. 6(b), for an enlargement of time to file their responses to the First Amended Class Complaint until 20 days after the Court rules on the pending Motion to Stay, or, in the alternative, July 15, 2005.¹ In support for this motion, Movants state as follows:

1. On February 17, 2005, the day before the President signed the Class Action Fairness Act, Plaintiff filed an original Class Action Complaint in the instant case. Plaintiff never served this complaint and no response was ever required.

2. On May 16, 2005, approximately three months after the original Complaint was filed, Plaintiff filed an Amended Class Action Complaint in Massachusetts Superior Court for Essex County, and served some Movants by May 18, 2005. Therefore, for some Movants, responses in Superior Court were due by June 7, 2005.

3. On June 1, 2005, Plaintiff’s counsel, Ken Gilman, and counsel for Marsh, Daniel Savrin, agreed to an extension to file responses to the Amended Class Action

¹ The Complaint names as a Defendant “American International Group” and not “American International Group, Inc.” and “USI Holdings, Inc.” but not “USI Holdings Corp.” In filing this motion, the Movants reserve any and all rights and defenses available under Rule 12 of the Federal Rules of Civil Procedure, including but not limited to, arguments concerning ineffective service of process, personal jurisdiction, and that any defendant is not a proper party to this action.

Complaint by July 15, 2005. This agreement was memorialized in an email from Mr. Savrin to Mr. Gilman that day, *see* Savrin Aff. Ex. 1, to which Mr. Gilman responded, *see* Savrin Aff. Ex. 2. The agreement was further memorialized in a letter from Mr. Savrin to Mr. Gilman dated June 6, 2005. *See* Savrin Aff. Ex. 3.

4. On June 15, 2005, Movant Marsh removed this action to this Court. Pursuant to Fed. R. Civ. Pro. 81(c) (in the absence of the parties' agreement), a response to the Complaint is due "within 5 days after the filing of the petition for removal."

5. On June 17, 2005, a tag-along notice was sent to the Clerk of the Judicial Panel on Multidistrict Litigation, noting that this matter was substantially similar to matters previously transferred to the United States District Court for the District of New Jersey, as part of the Multidistrict Litigation before Judge Faith S. Hochberg entitled *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (the "MDL litigation"). *See* Savrin Aff. Ex. 4.

6. On June 20, 2005, the Movants moved this court for a stay of proceedings pending transfer to the MDL litigation.² Therefore, were this court to grant Movants' Motion to Stay, no responses to the Amended Class Action Complaint would be due until Judge Hochberg ruled on the underlying uniform questions between this case and the MDL Litigation.

² While the agreement with Plaintiff constitutes an "order [or] other proceedings" in effect prior to removal to this Court, and should therefore remain "in full force and effect until dissolved or modified by the district court," *see* 28 U.S.C. §1450, in this motion Movants request a modification of that agreement in light of the Motion to Stay.

7. Because of the underlying similarities between this matter and the matters consolidated in the MDL Litigation, it would be both inequitable and inefficient to require Movants to file responses to the Amended Class Action Complaint in the instant matter before such responses are required in the MDL Litigation. Currently, Movants responses in the MDL Litigation would not be required before 60 days after the MDL Litigation Plaintiffs file their Consolidated Amended Class Complaint. *See Savrin Aff. Ex. 5.* As the MDL Litigation Plaintiffs Consolidated Amended Class Complaint need only be filed by August 1, 2005, *id.*, it is likely that no response in the MDL Litigation would be required until September 30, 2005 -- 60 days after August 1.

8. Furthermore, Plaintiff will suffer no harm were the Court to grant Movants an enlargement of time to file their responses to the Amended Class Action Complaint. First, Plaintiff already agreed to an extension until July 15, 2005. Second, Plaintiff waited almost three months to file and serve an Amended Complaint in this matter. In the context of Plaintiff's own unhurried actions and the overriding MDL schedule -- which Movants submit should govern this action -- there is no compelling harm argument that can be reasonably advanced in opposition to this Motion.

9. Movants have attempted to reach agreement with Plaintiff's counsel regarding the terms of an enlargement of time to file responses to the Amended Complaint Action Complaint and/or to confirm by formal stipulation the agreement for an extension of time documented by correspondence earlier this month, but have received no response from Plaintiff's attorney.

WHEREFORE, for the foregoing reasons, Movants respectfully request that this Court enlarge the time to file responses to the Amended Class Action Complaint until 20 days after the Court rules on the pending Motion to Stay or, in the alternative, July 15, 2005.

Dated: June 21, 2005

Marsh & McLennan Companies, Inc., and Marsh Inc., on their own behalf and on behalf of and with the consent of ACE USA; ACE INA; Zurich American Insurance Company; American International Group, Inc.; American Re-Insurance Company; Arthur J. Gallagher & Co.; Hilb Rogal & Hobbs, Company; Willis Group Holdings, Ltd.; Willis North America Inc.; Willis Group Ltd.; Universal Life Resources; Universal Life Resources, Inc. (d/b/a ULR Insurance Services, Inc.); USI Holdings Corp.; MetLife, Inc.; Prudential Financial, Inc.; UnumProvident Corporation; The St. Paul Travelers Companies, Inc.,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

The undersigned hereby certifies that on June 20, 2005 he conferred with Plaintiff's counsel in good faith to resolve or narrow the issues presented by the accompanying motion prior to the filing of said motion. Plaintiff's counsel committed to respond to the undersigned by midday on June 21, 2005, but did not do so. The undersigned undertook, thereafter, to contact Plaintiff's by telephone and email. Plaintiff's counsel has not responded. *See* Ex. A (attached to this Motion).

/s/ Joshua Vitullo
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Vitullo, Joshua

From: Vitullo, Joshua
Sent: Tuesday, June 21, 2005 6:17 PM
To: 'Kgilman@Gilmanpastor.com'
Subject: FW: Bensley Construction

Sensitivity: Confidential

Ken,

As we discussed yesterday, last night I emailed you a copy of the proposed stipulation for an enlargement of time. By this email, I am forwarding a second copy of that draft stipulation. When we talked yesterday, Monday June 20, 2005, you mentioned that you would review the stipulation and get back to midday on Tuesday June 21, 2005. When I had not heard back from you I called your office at approximately 3:00 p.m. and was informed you were in a meeting; I left you a message. When I had not heard back from you at the end of the day, I called again at 5:30 p.m. and was informed that you had left for the day.

As I mentioned yesterday, if we do not file a joint stipulation formalizing our agreement of earlier this month, we intend to file a motion for enlargement of time.

Please let me know your thoughts on the proposed stipulation by 9:30 a.m. tomorrow, Wednesday June 22, 2005. If we do not hear from you by then, we will assume you do not consent at this time and will file the motion. I can be reached directly at 617-951-8103.

Regards,

-Josh Vitullo

-----Original Message-----

From: Vitullo, Joshua
Sent: Monday, June 20, 2005 11:02 PM
To: 'Kgilman@Gilmanpastor.com'
Subject: Bensley Construction
Sensitivity: Confidential

Ken,

I have attached a draft of the stipulation agreement we discussed today. Let me know early tomorrow afternoon if this is acceptable and we will file it with the Court tomorrow afternoon. If acceptable to you, we can sign on your behalf.

By separate email I will forward a copy of the Motion to Stay, also as we discussed today.

Please call me should you have any questions.

-Josh



Bensley --
Stipulation and Agr..

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